

1  
2  
UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA  
34 United States of America,  
5

Plaintiff

Case No. 2:23-cr-00055-CDS-DJA

6 v.  
7 Eduardo Ruben Lopez,  
8

Defendant

Order Denying Appeal of Magistrate  
Judge's Order Denying  
Motion to Compel

[ECF No. 276]

9 Defendant Eduardo Lopez appeals an order (ECF No. 239) issued by United States  
10 Magistrate Judge Daniel Albregts denying his motion to produce a copy of Special Agent  
11 Fryxell's personnel file. Appeal, ECF No. 276.<sup>1</sup> The United States opposes the appeal. Opp'n,  
12 ECF No. 294.

13 When reviewing the order of a magistrate judge, the order should only be set aside if the  
14 order is clearly erroneous or contrary to law. Fed. R. Civ. P. 72(a); LR IB 3-1(a); 28 U.S.C. §  
15 636(b)(1)(A); *Laxalt v. McClatchy*, 602 F. Supp. 214, 216 (D. Nev. 1985). The "clearly erroneous"  
16 standard applies to a magistrate judge's factual findings, whereas the "contrary to law" standard  
17 applies to a magistrate judge's legal conclusions. See, e.g., *Grimes v. City & Cnty. of San Francisco*, 951  
18 F.2d 236, 240 (9th Cir. 1991).

19 Having conducted a de novo review of the personnel file, I find Judge Albregts's order is  
20 neither contrary to the law nor clearly erroneously. I concur with Judge Albregts and find that  
21 the contents of the personnel file are not relevant to the instant action and do not otherwise  
22 constitute *Brady*, *Gigilio*, or *Jencks* material. I further decline to preserve a copy of the personnel  
23 file as it contains no material information. See *United States v. Price*, 566 F.3d 900, 903 (9th Cir.  
24 2009) (Material information includes "evidence that might tend to impeach a government  
25 witness[.]"). Further, the court finds Lopez's request that a copy be preserved is akin to asking

26 <sup>1</sup> This objection was erroneously docketed as a "response."

1 the court to interfere with the practices of the executive branch, especially in light of the file  
2 being reviewed by two separate judges. The Ninth Circuit has long instructed that the courts  
3 should only exercise their supervisory authority—which preserving the personnel file would  
4 require—when there is “a clear basis in ‘fact and law’ for doing so.” See *United States v. Gatto*, 763  
5 F.2d 1040, 1046 (9th Cir. 1985) (quoting *United States v. Chanen*, 549 F.2d 1306, 1313 (9th Cir.  
6 1977)). There is no such basis here. Accordingly, Lopez’s appeal is denied.

## Conclusion

8 IT IS HEREBY ORDERED that Lopez's appeal of Magistrate Judge Albregts's order  
9 denying his motion to compel disclosure of Special Agent Fryxell's personnel file [ECF No. 276]  
10 is DENIED. The August 13, 2024, order (ECF No. 239) is AFFIRMED in full. The court  
11 declines to preserve of a copy of the file, so it will be destroyed.<sup>1</sup>

Dated: January 22, 2025

Cristina D. Silva  
United States District Judge